IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7789 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBODHCHANDRA GULABBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:
Mr.A.M.Kapadia for
MR SB VAKIL for Petitioners
Mr.S.N.Shelat, learned Advocate General, with
Mr.Umesh Trivedi, learned AGP for respondents.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 08/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Petitioners herein i.e. Petitioner No.1 being the husband and petitioner No.2 being the wife have filed this Special Civil Application through their constituted Attorney Shri Tulsidas Shamjibhai Patel with the prayers as under:-

"(A) be pleased to issue a writ of mandamus or a certiorari or a writ in the nature of mandamus or a certiorari or any other appropriate writ, order or direction, directing the respondent No.1 to pass an appropriate order to regrant the land and hand over the possession of the open land of 14,000 sq.mts. of land in Survey No.19 and 36,000 sq.mts. of open land in Survey Nos.20 & 21 in the sim of village Majura, Taluka Chorasi, District Surat as shown in to the map at Ann. "A" to the petition marked with red boundary to the present petitioners on such terms and condition that may be deemed fit and proper by this Hon'ble court.

(B) Any other writ, order or direction that may be considered necessary in the interest of justice may be issued.

(C) Pending hearing and final disposal of this petition, be pleased to restrain the respondent from in any manner dealing with the land under the petition. Except to forthwith proceed with the matter of deciding about regrant of the lands to the petitioners as per direction, Annexure "B".

(D) award the cost of this petition.

(E) Grant such other and further reliefs as might be deemed just and proper."

2. This Special Civil Application was filed in this court on 5.10.99 with the prayers as aforesaid. The petitioners claim to be the owners of the lands bearing Survey Nos.15,16, 19, 20 and 21 in the sim of village Majura, Taluka Chorasi, District Surat admeasuring about 6 lacs sq.yds. It is the case of the petitioners that this land was acquired by the State Government for the development of the Civil Hospital and Medical College of Surat on 29.3.61, but only 1 lac and 90 sq.yds. of the land had been utilised for the development of the Civil Hospital and other allied Hospitals and medical check up Centers and that the remaining land in question is not

required for any future expansion and as such there is no expansion programme as on date. The petitioners have alleged that the land has remained unutilised for all these years i.e. for about 38 years and the petitioners being the original owners had represented before the Collector, Surat in the year 1989 as provided in the Land Manual. The petitioners representation was for the re-grant of the land. The petitioners have alleged that the Collector called for the opinion of several authorities, including the Executive Engineer, Surat and the State Government and according to the petitioners the reports of all these authorities had been received revealing that the land, which had been acquired, was not to be utilised for any project and in fact it had remained unused. The petitioners have stated that the Officers from whom the reports were called for have admitted the factual basis that the lands are open, unused and not needed and may be re-granted to the petitioners and on that basis ultimately, the Minister of Revenue Department of the respondent No.1 through his Personal Assistant directed the concerned Secretary of the Department to do needful expeditiously in the matter of the petitioners' application read with the opinion papers. Copies of such documents have been annexed with the petition as Annexure "B' collectively. The petitioners claim that they are entitled to have the re-grant of the land and the land is required to be re-granted and re-vested in the hands of the petitioners, who are the former real owners from whom the lands are acquired and, therefore, the petitioners are entitled to the reliefs claimed in the petition.

3. When this petition came up before the court on 7.10.99 the petition was admitted by a single Bench of this Court. While admitting the petition, the Court noticed the statement of the learned counsel for the petitioners that in the letter dated 10.11.89 (Annexure "B") a reference has been made by the Special Land Acquisition Officer that some litigation filed by the petitioners was pending before the Apex Court and a Reference under Sec.18 was also pending before the competent court, but these two proceedings had been finally decided and now nothing remains pending before the Apex Court or any Reference under Sec.18 before the competent court. The learned counsel for the petitioners undertook to file a specific affidavit on this point and in terms of the order dated 7.10.99, the affidavit was filed on behalf of the petitioners as recorded in the proceedings dated 14.10.99 and the matter was posted for 26.10.99 by granting time to the learned AGP for filing the counter affidavit. The matter was adjourned on

different dates before the single Bench and on 28.6.2000 when the matter came up before the Court (Coram: A.L.Dave,J),it was recorded that, " Matter relates to land acquisition. To be placed before appropriate Bench." On the basis of this order dated 28.6.2000 passed by the court (Coram: A.L.Dave,J), the Registry made a submission that as per the sitting the land acquisition matters were being placed before Hon'ble M.H.Kadri and D.P.Buch,JJ, but whereas Mr.S.B.Vakil was appearing in this matter, the same could not be placed before Hon'ble M.H.Kadri,J and, therefore, orders were sought from Hon'ble Chief Justice. Hon'ble Chief Justice passed an order that it may be placed before Hon'ble D.C.Srivastava and Hon'ble H.K.Rathod,JJ. This order was passed by Hon'ble Chief Justice on 3.7.2000 and the matter came up before the Division Bench. When this matter was listed before the Bench of Hon'ble D.C.Srivastava and H.K.Rathod,JJ on 27.7.2000 an order was passed that this matter may be listed before a bench of which Hon'ble H.K.Rathod,J is not a member. The matter then came up before the Bench of Hon'ble D.C.Srivastava and K.M.Mehta,JJ. On 25.8.2000 Hon'ble K.M.Mehta also directed that he was sitting in a regular Division Bench and taking the final hearing matters from Monday to Thursday and it will result in piecemeal hearing which was inconvenient and, therefore, he directed the office to place the matter before Hon'ble Chief Justice for appropriate orders and, therefore, the matter was again placed before Hon'ble Chief Justice and the Hon'ble Chief Justice passed an order on 30.8.2000 that the matter may be listed before Court No.8 i.e. before Hon'ble J.M.Panchal and Hon'ble M.C.Patel,JJ. Thereafter with the change of the sittings the matter came up before this Bench. On 27.2.2001 when the matter was argued for some time the learned counsel for the petitioners sought time to study the matter further and the matter was posted for hearing today i.e. on 8.3.2001.

4. So far as pleadings in this case are concerned, we have before us:

(i) Special Civil Application with documents Annexures A and B.

(ii) Affidavit in reply with documents dated 26.10.99 filed by one Shri P.M.Asari, Under Secretary to Government of Gujarat, Health and Family Welfare Department.

(iii) Rejoinder affidavit with documents dated 29.10.99 filed on behalf of petitioners.

(iv) Affidavit in sur rejoinder dated 22.11.99 on behalf of respondents filed by Shri P.M.Asari, Under Secretary, Health and Family Welfare

Department alongwith documents.

(v) Affidavit in reply to sur rejoinder dated 16.12.99 filed on behalf of the petitioners alongwith documents.

(vi) Additional affidavit with sur rejoinder dated 21.1.2000 on behalf of the petitioners with documents, map, etc.

(vii) Affidavit in reply dated 4.2.2000 filed by Shri P.M.Asari, Under Secretary to Government of Gujarat, Health and Family Welfare Department with Annexures, map etc.

(viii) Affidavit in reply dated 18.2.2000 on behalf of respondent No.2 filed by one Shri M.S.Gohil, Special Land Acquisition Officer,Branch I, In-charge Branch - IV, Surat alongwith annexures, etc.

(ix) Affidavit in reply dated 28.2.2000 filed by one Shri K.L.Vankar, Deputy Secretary, Revenue Department alongwith annexures.

5. After considering the pleadings of the parties, it appears that the lands of following description have been utilised and is proposed to be utilised:-

Total area of Medical College Campus, excluding land awarded for Lions Cancer Detection Centre, ESIS Hospital & Chhaydo Building.	500955 sq.mtr.
Existing constructed area (Usable) including playground.	392849 sq.mtr.
Proposed construction	11015 sq.mtr.
(a) Already sanctioned (CI.I & II Qutrs. & trauma centre)	
(b) Proposed	64501 sq.mtr.
Internal road and area required by S.M.C. for T.P.Scheme.	33493 sq.mtr.
Total	501858 sq.mtr.

6. Respondents case is that the Government Medical College and Hospital, Surat was set up for providing medical education as also for the treatment of the patients. Both these Institutions are inter-related and inter-dependent. The college is meant for teaching the

medical students and the medical teachers also give treatment to the patients in the attached teaching Hospital. Both these institutions with different departments are inter-connected and are required to be in proximity with each other, in accordance with the Regulations of the Medical Council of India. The Medical College was started with an annual intake capacity of 50 medical seats at the undergraduate level, which was subsequently increased to 100 medical seats. Again in the year 1992 the intake capacity was enhanced to 120 medical seats. Considering the ever increasing demand for medical education, the State Government decided to increase 30 more medical seats bringing the total intake capacity to the maximum permissible limit of 150 medical seats. Proposal for taking permission of Government of India and Medical Council of India had already been submitted and the Medical Council of India Inspectors are to be deputed to carry out on the spot inspection of the Government Medical College and Hospital, Surat to assess the fulfillment of the criteria laid down in the Medical council of India Regulations for 150 seats. At the initial stage the infrastructure of both medical personnel and beds of the Maskati Hospital run by Surat Municipal Corporation were utilised and the teaching Hospital attached to the Medical College, Surat had the bed strength of 740. The State Government had accorded sanction for additional 300 beds at the cost of Rs.8.57 lacs during the financial year 1999-2000. A new Ward for 100 beds is also sanctioned at the cost of about Rs.10 lacs. New special rooms had been constructed. The Government had also sanctioned an amount of Rs.13.76 lacs for construction of deformatic wards for leprosy during the current financial year. The State Government had also accorded sanction for 16 new posts for new 8 super speciality Units during the same current financial year. The State Government had started a number of postgraduate courses in the Medical College over and above the undergraduate course of M.B.B.S. and also gave approval for new postgraduate courses in the subject of biochemistry, T.B. and Chest diseases and super speciality course in burns and plastic surgery. It is the case of the respondents that the medical students are required to be given on-campus training and the medical teachers of all levels, the para-medical staff and even Class-IV employees concerned with the Hospital services are also supposed to be in the Campus to cater to the treatment needs of the patients round the clock, especially for providing emergency services, more so at the time of natural calamities. The set up also requires adequate hostel facilities for medical students and particularly residents doing P.G.course, staff quarters

for medical teachers and other employees. The Hospital has also to house in-door patients with adequate facilities according to the norms. In this regard reference has been made to the Medical Council of India Regulations,1998, outlining the minimum standard requirement for 150 admissions annually. It has been stated in the affidavit in reply that whole of the land now possessed is required for the medical college and the Hospital. It has also been pleaded that 100 per cent construction is not allowed on a piece of land and open space is required to be kept at the time of any construction. It is a teaching institution where open land is required to be kept for play ground, green land, gymnasium and cultural activities. Some space is also required for different and miscellaneous purpose like parking, gardening, internal roads, laundry, incinerators etc. and, therefore, no land can be spared and re-granted. It has been pleaded that the construction of College and Hospital building, which are urgently required, were completed in the initial years from 1960 to 1970 and construction of other buildings have been taken up subsequently. The pace of construction activities is required to be accelerated in view of the increase in seats and courses. It has been pleaded in Para 13 of the affidavit in reply dated 26.10.99 that Survey No.16 is required for administrative block for Hospital and trauma centre. Survey No.19 is required for administrative block for medical college and building for Radiology Department. The construction work of this Department is in progress. Survey No.20 is acquired for road margin under T.P.Scheme and Survey No.21 is required for staff quarters for Class-I and II Officers, for which necessary administrative approval of Rs.3 crores had already been granted. With the proposed increase of 30 seats in the Medical College, it was proposed to provide for a 200 seated lecture hall (gallery type) at the cost of Rs.30 lacs to fulfill the requirement of Medical Council of India. There was also a proposal to construct De-addiction centre in the Campus and as a part of future expansion the following works were envisaged:-

(a) Hostel for U.G. and P.G.students.
(b) Shopping centre for patients, students and employees.
(c) Expansion of operation theatre building.
(d) C.T.Surgery Unit.
(e) Modernized blood bank.
(f) Neonatal care unit.
(g) Cardiology/urology unit.
(h) Burns and Plastic Surgery Unit and ward.
(i) Paediatrics surgery Unit.

(j) Nephrology Unit.
(k) Neurosurgery Unit.
(l) Regional Workshop.
(m) Staff quarters for different categories.
(n) Hospital buildings for 300 beds.
(o) Physiotherapy school building.
(The State Government is contemplating to have a physiotherapy school in each of the Government Medical Colleges)
(p) Physiotherapy Hostel building separately for boys and girls.
(q) Internal roads.

7. While referring to the opinion of the Land Acquisition Officer given way back in 1989 and opinion of the Executive engineer and Note of the Personal Secretary of Revenue Minister, it has been submitted that it is the Government in Health and Family Welfare Department which is the right authority for giving opinion as to the requirement of land for construction and future expansion of the said College and Hospital. The Executive Engineer can at the most give details about the area already covered by construction and the proposed construction. The Government in Health and Family Welfare Department and both the Additional Director of Medical Education and Dean, Government Medical College, Surat have clearly opined that in view of the present status and ever expanding activities of the Government Medical College and Hospital Surat, it is not possible to re-grant the land as prayed for.

8. The affidavit dated 28.2.2000, as has been filed by one Shri K.L.Vankar, Deputy Secretary, Revenue Department, shows that in the matter of unutilised surplus land of Surat Civil Hospital and Medical College, the matter has been considered at the highest level by the Governor on 15.10.96 and by the Chief Minister on 27.10.97.

9. In view of the pleadings it cannot be said that the land, which was acquired, has not been utilised or that the Government has no plan to make use of the land, as was acquired. It is a matter, which can be staraightaway considered and taken judicial notice of that the development plans of Hospital with attached Medical Colleges are long term development plans and the land, which is acquired for such Institutions, cannot be utilised in a single stroke. The development always takes place in phases subject to the availability of the budget and the necessary budgetary provisions for further expansion of such Institutions. The lands are acquired

for such Institutions keeping in view the needs of different types for the coming number of years and in such matters, it would be too much to expect that the entire acquired land is put to use immediately. In such cases, Plans and Projects are prepared keeping in view the advancement for improvement for coming 50 years or even more than that because in coming times the land may not be available at all for further expansion of such Hospitals and Colleges and for its various activities and, therefore, the land has to be kept for such purposes.

10. Mr. A.M.Kapadia on behalf of the petitioners has placed strong reliance on Para 307 of the Gujarat State Land Acquisition Manual, 6th Edition, 1995. Para 307 of this Manual reads as under:-

"307 After payment (but before taking possession) if land acquisition had been withdrawn, if the compensation amount is not otherwise recovered the same can be recovered by Suit. But if possession is taken (and payment has been made) thereafter the Government cannot withdraw land acquisition but can regrant and former owner can abandon his right and return the full or part compensation. Any person can for his own benefit let go benefit under a prevailing Act, Rules or principle. The said transaction would be regrant of the land on conditions determined by the Government and Collector. ....."

11. The submission of Mr. Kapadia on behalf of the petitioners is that while it is not in dispute that the possession had been taken long back and the payment of compensation has also been made, yet the Government can regrant the land and the former owner can abandon his right and return the full or part of compensation. As per the pleadings of the respondents themselves, land of nearly 1,00,000 sq.mtrs. is still lying vacant and unutilised. He has also referred to a Circular No.12 in the compilation of the Government Circulars, Resolutions and Orders issued by the Revenue Department of the Government of Gujarat in the year 1989 and while referring to page 108 thereof, it has been contended that when the Railway Company or other acquiring body does not require for its use the land acquired and when it is decided to dispose of the said land in accordance with Paragraph 3.28 of the Land Acquisition Manual, in absence of any special reason such land should be regranted in the first instance to those from whom the land is acquired or their guardians or heirs according to the compensation decided by the State Government. He has

also referred to Buildings Department Resolution No.C/9986-07. He has also cited before us the following decisions:-

(a) AIR 1977 SC 1516 (Textile commissioner v/s. Sagar Textile Mills)
(b) AIR 1988 SC 2036 (Union of India v. K.K.Chopra)
(c) AIR 1963 SC 1618 (State of Uttar Pradesh v/s. Jogendra Singh)
(d) 1996(7) SCC 729 (Savitri Devi v. State of Haryana)

12. As against it, Mr. Umesh Trivedi, learned AGP has placed reliance on the following decisions:-
1. (1996)6 SCC 405 (Chandragauda Ramgonda Patil v/s. State of Maharashtra).
2. (1997)2 SCC 627 (C.Padma v. Dy. Secretary to the Govt. of T.N.)
3. AIR 1997 SC 2703 (State of Kerala v/s. M. Bhaskaran Pillai)

13. We have heard learned counsel and have also gone through the relevant decisions on which reliance has been placed by the learned counsel. We find that the position of law on this aspect is settled that as and when the land is acquired by Government for a particular public purpose, it can be utilised for any public purpose and once the land is acquired, it becomes vested in the Government and there is no question of any enforceable right with the original land owners in case the same is not utilised. Such lands may remain in the process of utilisation and may be utilised by the Government or the acquiring body for whose benefits such lands are acquired and no re-grant can be claimed by any party as an enforceable right before the Court of law.

14. So far as the Manual and Circulars, to which reference has been made by the learned counsel for the petitioners are concerned, it is very clear that the regrant of the land is possible under the provisions of this Manual and the Circulars etc. only when the Government takes a decision that the land is not required by it and the Government itself decides to abandon the land, which was acquired. Therefore, the decision of the Government with regard to the abandonment of the land and that the land acquired is not required by it is a condition precedent for invoking such provisions as are contained in the Manual and Circulars. In the facts of the present case, as have been placed on record, it appears that a substantial part of the land has already

been utilised and rest of the land is in the process of being utilised. Thus, there is no question of any direction for regrant of the land at this stage, when there is no decision by the Government that the land, which is the subject matter of this petition and which has been acquired long back, is abandoned and is not required. The opinions on which reliance was placed are in fact not relevant for the purpose of deciding the controversy of regrant. Unless a decision is taken by the Government that any part of it is not required or that it seeks to abandon the land, the request for regrant cannot be accepted and so far as this Court is concerned, it finds that the petitioners have no enforceable right to claim regrant. If at all the Government at any point of time comes to the conclusion that it seeks to abandon any part of the land, which was acquired in the year 1961, which is the subject matter of this petition, or that the Government abandoned this land, the request of the petitioners may be considered by the Government in accordance with the relevant provisions contained in the Manual and the relevant Circulars.

15. We do not find any merit in this Special Civil Application. With the observations, as aforesaid, this Special Civil Application is hereby rejected. Rule is hereby discharged. No order as to costs.

(M.R.Calla,J)

(J.R.Vora,J)